

## REMARKS

The Office Action dated May 14, 2009, has been received and carefully noted. The above amendments and the following remarks are being submitted as a full and complete response thereto.

Claims 1-4, 7-13, and 15-23 are rejected. Claims 15 and 16 are objected to. By this Amendment, Claims 1-4, 7, 9-13, 15, 19, and 21-23 are amended. Claims 8, 16-18, and 20 are canceled without prejudice and disclaimer. Therefore, after entry of this Amendment, Claims 1-4, 7, 9-13, 15, 19, and 21-23 will be currently pending and under examination, of which Claims 1, 22 and 23 are independent claims. Support for the amendments may be found in the specification as originally filed at, for example, page 3, lines 32-36, and page 4, lines 33-34. Applicant submits that no new matter is added.

. Applicant respectfully requests reconsideration and withdrawal of the rejections.

### Claim Objections

The Office Action asserts that should Claim 15 be found allowable, Claim 16 will be objected to under 37 C.F.R. §1.75 as being a substantial duplicate thereof.

Claim 16 has been canceled in response to the objection. Accordingly, the Applicant respectfully requests withdrawal of the objection to Claims 15 and 16.

### Claim Rejections – 35 U.S.C. §112

Claims 1-4, 7-13, and 15-23 are rejected under 35 U.S.C. §112, first paragraph, as failing to comply with the written description requirement. Claims 1-4, 7-13, and 15-23 are further rejected under 35 U.S.C. §112, second paragraph, as being

indefinite for failing to particularly point out and distinctly claim the subject matter which Applicant regards as the invention.

In response, Claims 1-4, 7, 9-13, 15, 19, and 21-24 are amended. Applicant respectfully requests withdrawal of the §112 rejections of Claims 1-4, 7-13, and 15-23.

### **Claim Rejections – 35 U.S.C. §103**

Claims 1, 2, 7, 15, and 16 are rejected under 35 U.S.C. §103(a) as being unpatentable over Favre (CH 488686, hereinafter “Favre”) in view of Cavalluzzi (U.S. Patent No. 3,985,069, hereinafter “Cavalluzzi”), Moerlini et al. ((U.S. Patent No. 3,411,431, hereinafter “Moerlini”), le Granse (U.S. Patent No. 4,550,024, hereinafter “le Granse”), Ranz (U.S. Patent No. 2,615,384, hereinafter “Ranz”), and van der Lijn et al. (U.S. Patent No. 4,860,645, hereinafter “van der Lijn”). Claims 3 and 4 are rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to Claim 1, 2, 7, 15, and 16 above, and in further view of Brody (The Encyclopedia of Food Packaging Technology, hereinafter “Brody”). Claims 8 and 9 are rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to Claim 1, 2, 7, 15, and 16 above, and in further view of Arkins et al. (U.S. Patent No. 6,116,782, hereinafter “Arkins”), Lagneaux (EP 0007876, hereinafter “Lagneaux”), and Cai (U.S. Patent Publication No. 2002/0078831, hereinafter “Cai ‘831”) and as further evidenced by Robichaud et al. (U.S. Patent No. 5,782,404, hereinafter “Robichaud”). Claims 10, 11, and 17-23 are rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to Claims 8 and 9 above, and in further view of Kataoka (U.S. Patent Publication No. 2002/0148772 A1, hereinafter “Kataoka”), Harriss (U.S. Patent

No. 2,965,501, hereinafter "Harriss"), Bernhardt (U.S. Patent No. 4,340,138, hereinafter "Bernhardt"), and Petrofsky et al. (U.S. Patent No. 5,045,333, hereinafter "Petrofsky"). Finally, Claims 12 and 13 are rejected under 35 U.S.C. §103(a) as being unpatentable over the references as applied to Claims 1, 2, 7, 15, and 16 above, and in further view of Cai (U.S. Patent No. 6,777,007, hereinafter "Cai '007").

Applicant respectfully traverses these rejection based on the following reasons.

The capsule according to the invention comprises a first container in which is contained a powder of infusion substance (that is for example a filter bag for coffee); the capsule comprises a second container containing a powdered soluble substance (that is a rigid container commonly realized in plastic material containing powdered milk); the first container being contained in the second container (the pod being contained in the plastic rigid capsule); the top of the capsule is covered by a removable sheet of protective material. The first container (pod), the second container (the plastic rigid one) and the top removable sheet realize the capsule in object.

Applicants respectfully submit that none of the cited art, when combined and taken alone, teaches or suggests at least the combination of features of "the flexible first container comprises a self-contained and fully enclosed pod made of filter paper or other similar filter material placed inside the second container, and wherein the self-contained and fully enclosed pod containing the powdered infusion substance (MI) therein is revealed after the removable sheet has been removed, and a bottom surface of the second container has a hole, covered by a seal of suitable material designed to be opened or pierced and to re-close the hole when the capsule is removed after being used," as recited in amended Claim 1, and "the bottom surface of the second container

has a hole in it, covered by a seal of suitable material designed to be pierced when the capsule has to be used, and to re-close the hole when the capsule has already been used, and wherein the first container comprises a self-contained and fully enclosed filter membrane pod containing the powdered infusion substance therein, and is placed within the second container, and the self-contained and fully enclosed filter membrane pod is revealed after a removable sheet has been removed from a top surface of the capsule," as recited in amended Claim 22. Further, none of the cited art, taken alone or in combination, teaches or suggests that "the flexible first container comprises a self-contained and fully enclosed pod made of filter paper or other similar filter material having an annular outer edge fixed to a matching annular protuberance on the plastic cartridge, at the top of the cartridge, wherein the self-contained and fully enclosed pod contains the powdered infusion substance therein and is revealed after a cover sealing the capsule is removed from a top surface of the capsule," as recited in amended Claim 23.

According to the Office Action, Favre already teaches placing an infusion material within container (71) and a soluble/dissolvable material in the second container (7) and also teaches a removable cover (41) that covers the top of capsule but is silent in the first container (71) comprising a self-contained and fully enclosed pod made of filter paper or other similar filter material. The Office Action then relies on Cavalluzzi that allegedly teaches the advantages of providing a fully enclosed container for containing the infusible/extractable substances such as ground coffee for the purpose of preventing the upward migration or coffee during the brewing stage. The Office Action

further alleges that Moerlini, Le Granse, Ranz, Van der Lijn all teach pre-made pod comprised of filter paper.

As admitted in the Office Action, Favre fails to teach or disclose a self-contained and fully enclosed pod. Indeed, it is clear from Favre that the membrane shutter 41 has two distinct functions, namely to define the compartment 71 and to define a removable cover for the capsule. Once the membrane shutter 41 is removed from the capsule, the compartment 71 (understood as a closed compartment or a pod) ceases to exist as such.

Cavalluzzi relates to a coffee brewer. As shown in Fig. 1, the ground coffee 20 is placed into a filter cup 26 and is pressed down by a partition disk 22 with perforations 24. The perforations of the partition disk 22 are normally covered with an overlay of adhesive backed tape 30. When used, the tape 30 is peeled off to allow fluid to flow into the filter cup 26. It is clearly, such a structure composed of the filter cup 26 and the partition disk 22 is not the same as a self-contained and fully enclosed pod made of filter paper or other similar filter material, as recited in the claims. Indeed, the filter cup 26 of Cavalluzzi is a rigid cup, not made of filter material.

Further, none of Moerlini, Le Granse, Ranz, Van der Lijn teaches or suggests that “the flexible first container comprises a self-contained and fully enclosed pod made of filter paper or other similar filter material placed inside the second container, and wherein the self-contained and fully enclosed pod containing the powdered infusion substance (MI) therein is revealed after the removable sheet has been removed,” nor the teachings of “a bottom surface of the second container has a hole, covered by a seal of suitable material designed to be opened or pierced and to re-close the hole

when the capsule is removed after being used," as recited in amended Claim 1, or similarly in amended Claims 22-23.

Paragraph 13 of the Office Action asserts that Favre discloses that the bottom surface of the cartridge is pierced, as shown in Fig. 6 but admits that Favre does not explicitly or inexplicitly teaches that the bottom surface of the cartridge has a hole in it, covered by a seal which is designed to be pierced or removed. However, the Office Action alleges that Arkins, Lagneaux, Cai, and Robichaud teach such structure.

Applicant respectfully traverses these assertions because none of the cited art teaches or suggests that "a bottom surface of the second container has a hole, covered by a seal of suitable material designed to be opened or pierced and to re-close the hole when the capsule is removed after being used," as recited in amended Claim 1 and similarly in amended Claims 22-23.

Further, in addition to Arkins, Lagneaux, Cai, and Robichaud, none of the cited art Kataoka, Harriss, Bernhardt, and Cai '077 cures the deficiencies of Favre, Cavalluzzi, Moerlini, Le Granse, Ranz, and Van der Lijn.

For at least the above reasons, Applicant respectfully submits that amended Claims 1, 22, and 23 are allowable over the cited art. As Claims 1, 22, and 23 are allowable, Claims 2-4, 7, 9-13, 15, 19, and 21, which depend from allowable Claim 1, are likewise allowable over the cited art at least for the reasons set forth above with respect to amended Claim 1 and additional features recited therein.

### Conclusion

Applicant respectfully submits that this application is in condition for allowance and such action is earnestly solicited. If the Examiner believes that anything further is

desirable in order to place this application in even better condition for allowance, the Examiner is invited to contact Applicant's undersigned representative at the telephone number listed below to schedule a personal or telephone interview to discuss any remaining issues.

In the event that this paper is not being timely filed, the Applicant respectfully petitions for an appropriate extension of time. Any fees for such an extension, together with any additional fees that may be due with respect to this paper, may be charged to Counsel's Deposit Account Number 01-2300, referencing Docket Number 023349-00298.

Respectfully submitted,



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